

P O R T E R | S C O T T

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ESTATE OF FRANK CARSON AND
GEORGIA DEFILIPPO, as an individual and
as successor in interest to FRANK CARSON,

Plaintiffs,

v.

COUNTY OF STANISLAUS, CITY OF
MODESTO, BIRGIT FLADAGER,
MARLISSA FERREIRA, DAVID HARRIS;
KIRK BUNCH, STEVE JACOBSON, JON
EVERS, CORY BROWN, and DOES 1-25,
inclusive,

Defendants.

CASE NO. 1:20:cv-00747-TLN-BAM

**NOTICE OF STANISLAUS COUNTY
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' THIRD AMENDED
COMPLAINT**

Date: January 12, 2023

Time: 2:00 p.m.

Courtroom: 2, 15th Floor

Complaint Filed: 05/28/2020

First Amended Complaint Filed: 11/20/2020

Second Amended Complaint: 11/18/2021

Third Amended Complaint: 10/14/22

TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on January 12, 2023, at 2:00 p.m. in Courtroom 2 of the United States District Court, Eastern District of California located at 501 I Street, Sacramento, California 95814, COUNTY OF STANISLAUS, BIRGIT FLADAGER, MARLISSA FERREIRA, DAVID HARRIS, KIRK BUNCH, STEVE JACOBSON, and CORY BROWN, hereby move the Court for an order dismissing the Third Amended Complaint of Plaintiffs ESTATE OF FRANK CARSON

1 AND GEORGIA DEFILIPPO pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.")
2 12(b)(6) on the following grounds:

3 A. Official capacity suits are redundant to claims against the County.

4 B. Plaintiff's claims for judicial deception under the Fourth Amendment and false
5 arrest/false imprisonment against the District Attorney Defendants Fladager, Harris, and Ferreira
6 are barred by the statute of limitations.

7 C. Claims for false arrest/false imprisonment are barred because Plaintiff failed to
8 comply with the California Tort Claims Act.

9 D. Plaintiff fails to state a claim for malicious prosecution against Defendants Fladager,
10 Harris, and Ferreira.

11 E. Plaintiff fails to state a cognizable claim for retaliatory prosecution under the First
12 and Fourth Amendments.

13 F. Plaintiff fails to adequately state a claim under the Fourteenth Amendment.

14 G. Plaintiff fails to plead sufficient facts to support a *Monell* claim.

15 H. Plaintiff fails to state a cognizable claim under Cal. Civil Code §52.1, and Defendants
16 Fladager, Harris, and Ferreira are immune pursuant to Cal. Gov. Code §820.8.

17 I. Defendants have prosecutorial immunity under Gov. Code §821.6 for Plaintiff's Cal.
18 Civil Code §52.1 claim.

19 J. Defendants Fladager and Harris are not proper parties to the claim for municipal
20 liability.

21 This motion to dismiss is based on this notice of motion, the supporting motion and
22 memorandum of points and authorities, the entire court file and any other pleadings, evidence or
23 legal arguments that may be presented at the time of the hearing to the extent one is held.
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25 Dated: November 4, 2022

PORTER SCOTT
A PROFESSIONAL CORPORATION

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27 By /s/ John R. Whitefleet
John R. Whitefleet
Attorney for Defendants
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